TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 490.

HARRY PLUMMER, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF JOSEPH PLUMMER, DECEASED, PLAINTIFF IN ERROR,

vs.

BIRD S. COLER, COMPTROLLER OF THE CITY OF NEW YORK.

IN ERROR TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK, STATE OF NEW YORK.

FILED JANUARY 9, 1900.

(17,603.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 20, 1900.

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a In the Court of Appeals.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Papers on Appeal.

Jabish Holmes, Jr., attorney for the Comptroller of the City of New York, respondent.

Evarts, Choate & Beaman, attorneys for appellant.

Endorsed: Filed Jan'y 8, 1900.

b Court of Appeals.

STATE OF NEW YORK, *ss.*:

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 8th day of January, in the year of our Lord one thousand nine hundred, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur January 8th, 1900.

c In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Be it remembered that on the 8th day of January, in the year of our Lord one thousand nine hundred, Harry Plummer, as executor, etc., the appellant in this action, came here into the court of appeals, by Evarts, Choate & Beaman, his attorneys, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the first judicial department, and Bird S. Coler, comptroller of the city of New York, the respondent in said action, afterward appeared in said court of appeals, by Jabish Holmes, Jr., his attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

d Whereupon, the said court of appeals having heard this cause argued by Mr. William V. Rowe, of counsel for the appellant, and by Mr. Jabish Holmes, Jr., of counsel for the respondent, and after due deliberation had thereon did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is, affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the surrogate's court in and for the county of New York, there to be proceeded upon according to law.

Therefore it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the surrogate's court in and for the county of New York, before the surrogates thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said surrogate's court before the surrogates thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *January 8th*, 1900.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, *Clerk.*

1 Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Statement under Rule 41.

The petition of Harry Plummer, as executor of Joseph Plummer, deceased, was filed December 19, 1898. The order made thereon appointing an appraiser was filed December 20, 1898.

The names of the parties herein are Bird S. Coler, comptroller of the city of New York; Harry Plummer and Ella Plummer Brown.

All of the parties are of full age.

The comptroller was represented on the hearing before the appraiser.

The appraiser's report was filed June 3, 1899.

The order fixing the tax herein was filed July 19, 1899.

The notice of appeal to the surrogate was filed September 16, 1899.

The order confirming the order fixing the tax was filed December 22, 1899.

2 *Petition for Appraiser, Read on Behalf of Petitioner.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

To the Honorable John H. V. Arnold, surrogate:

The petition of Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, respectfully shows:

First. That your petitioner is the executor of the last will and testament of Joseph Plummer, deceased, and as such is a person interested in the estate of the said decedent.

Second. That the said decedent departed this life on the twenty-fourth day of October, 1898, in the borough of Manhattan, in the city of New York, and that he was at the time of his death a resident of the State, city and county of New York.

Third. That the said decedent left a last will and testament whereby he appointed your petitioner the sole executor thereof, which will was on the twenty-third day of November, 1898, duly proved before and admitted to probate as a will of real and
3 personal property by the surrogate's court of the county of New York, to which jurisdiction in that behalf appertained, and that letters testamentary under said will were, on the same day, issued by said court to your petitioner, who is now the sole executor of said will.

Fourth. That as your petitioner is informed and believes, the property of said decedent passing by said will, or some portion thereof, or some interest therein, is subject to the payment of the tax imposed by the law in relation to taxable transfers of property.

Fifth. That all of the persons who are interested in the estate of said decedent and who are entitled to notice of all proceedings herein, including your petitioner and the comptroller of the city of New York, and their post-office addresses, are as follows, viz:

Bird S. Coler, comptroller of the city of New York, whose post-office address is number 280 Broadway, borough of Manhattan, New York city.

Harry Plummer, your petitioner, a son of said deceased testator, and a devisee and legatee and the executor named in said will, whose post-office address is No. 23 Gramercy park, borough of Manhattan, New York city.

Ella Plummer Brown, a daughter of said deceased testator, and the beneficiary of a trust created for her benefit under and by virtue of said will, whose post-office address is No. 225 West Twenty-third street, borough of Manhattan, city of New York.

Wherefore, your petitioner prays that you will appoint some competent person as appraiser, as provided by law.

And your petitioner will ever pray, &c.

HARRY PLUMMER, *Executor.*

——— ———,
Attorneys for Petitioner.

4 STATE OF NEW YORK, }
County of New York, } ss.:

Harry Plummer, being duly sworn, deposes and says, that he is the petitioner in the foregoing petition named; that he has read the said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

HARRY PLUMMER.

Sworn to before me this 19th day of December, 1898.
WM. R. MONTGOMERY,
Notary Public, New York County.

Original filed December 19, 1898.

Order Appointing Appraiser.

At a surrogate's court of the county of New York, held at the county court-house, in the borough of Manhattan, in the city of New York, on the 19th day of December, 1898.

Present: Hon. John H. V. Arnold, surrogate.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

On reading and filing the petition of Harry Plummer, as
5 executor of the last will and testament of Joseph Plummer, deceased, praying for the appointment of some competent person as appraiser under and in pursuance of the law in relation to taxable transfers of property, verified December 19, 1898; and on motion of Evarts, Choate & Beaman, attorneys for the said petitioner—

It is ordered, that Gilbert W. Minor, Esquire, be, and he hereby is, appointed such appraiser;

And it is further ordered, that said appraiser shall give the notice required by the said law in the manner and at the time therein set forth (and the said notice shall be fifteen days) to the following persons, and to all other persons known to have a claim or interest in the property of Joseph Plummer, the decedent named in the above-entitled proceeding, subject to the payment of said tax, viz:

Bird S. Coler, comptroller of the city of New York, number 280 Broadway, borough of Manhattan, New York city.

Harry Plummer, number 23 Gramercy park, borough of Manhattan, New York city.

Ella Plummer Brown, number 225 West Twenty-third street, borough of Manhattan, city of New York.

JOHN H. V. ARNOLD, *Surrogate.*

(Endorsed:) Filed December 19, 1898.

6 *Report of Appraiser.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal of the Property of JOSEPH PLUMMER, Deceased, under the Act in Relation to Taxable Transfers of Property. Died October 24, 1898.

To the surrogate's court, county of New York:

I, the undersigned, who was, by an order made and entered on the 19th day of December, 1898, appointed appraiser under and in

pursuance of the law in relation to taxable transfers of property, a certified copy of which order is hereto attached, respectfully report:

First. That forthwith after my said appointment I duly took and subscribed the oath prescribed by statute, which said oath is hereunto annexed.

Second. That thereafter, on the 22d day of December, 1898, I duly gave notice by mail, postage prepaid, to all persons known to have or claim an interest in all property of said Joseph Plummer, deceased, subject to the payment of the tax imposed by said law, including those named by the surrogate in the said order, of the time and place I would appraise the property of Joseph Plummer, deceased, subject to the payment of the said tax; a true copy
7 of said notice, together with proof of mailing thereof, is also hereto attached.

Third. I further report that the following appearances were made before me in this proceeding:

Comptroller of the city and county of New York.

Messrs. Evarts, Choate & Beaman, for the petitioner.

Fourth. I further report that the decedent died on the 24th of October, 1898.

Fifth. I further report that at the time and place in said notice stated, to wit, on the 11th day of January, 1899, at No. 280 Broadway, in the city of New York, and at other and subsequent times and at divers places, I appraised all the property, being personal property of said Joseph Plummer, deceased, subject to the payment of said tax, at its fair market value, as follows, to wit:

Personal Estate.

Cash	$112 21	
$40,000 in U. S. Gov. bonds, 4%, due 1907	44,400 00	
1 $1,000 bond Wabash R. R. Co., 6% debenture, "B," due 1939	320 00	
50 shares stock of the Kingston & Pembroke Iron Mining Co., $25	15 00	
1,200 shares stock Comstock Tunnel Co. ($2)	48 00	
2 1st-mortgage income bonds of the Comstock tunnel, due 1949	4 00	
1st-mortgage income scrip of the Comstock tunnel	80	
Total personal estate		$45,075 01
8 From which I deduct:		
Medical and other expenses of illness	$886 45	
Undertaker and funeral expenses	337 60	
Expenses of administration	600 00	
Debts	18 89	
Commissions	640 75	
		1,683 69
Net personal estate		$43,391 32

Which is payable as follows:

To Emma Plummer Brown, daughter:

Interest as beneficiary in the income during her life of a trust fund consisting of $40,000 in amount at par of bonds of the United States $16,120

To Harry Plummer, son:

Contingent interest in remainder in trust fund of $40,000 of U. S. bonds (of above market value of $44,400) on death of the said Emma Plummer Brown, contingent upon, and to vest in possession only in case of her leaving no issue her surviving and his surviving her, which remainder is $27,271.32, and is not presently taxable, as in whom such contingent interest will ultimately vest cannot now be definitely ascertained.

Dated New York, May 31, 1899.

Respectfully submitted.

GILBERT W. MINOR, *Appraiser.*

9 Estate of JOSEPH PLUMMER, Deceased. *In re* Chapter 399, Laws of 1892.

STATE OF NEW YORK, INSURANCE DEPARTMENT,
ALBANY, *March 29th*, 1899.

SIR: In reply to your request of the 27th instant, I give below the present values desired:

Ella Plummer Brown, life annuity of $1,200, per annum.. $16,120

Very respectfully, LOUIS F. PAYN,
Superintendent.

To Hon. James M. Varnum, surrogate New York county, New York, N. Y.

(Endorsed:) Filed June 3, 1899.

Will of Joseph Plummer.

I, Joseph Plummer, of the city of New York, being of sound mind, memory and understanding, do in view of the uncertainty of life, make this my last will and testament as follows; that is to say:

First. I direct that all my just debts and funeral expenses be first paid out of my estate by my executor hereinafter named so soon after my death as shall be practicable.

Second. I give, devise and bequeath to my said executor forty thousand dollars at par of United States bonds, to have and to hold such bonds to him and his successors, *in trust*, during the lifetime of my daughter *Ella Plummer Brown* to collect and receive
10 the issues, income and profits thereof and pay the same over to my said daughter Ella Plummer Brown so long as she shall live, and upon the decease of my said daughter and the consequent termination of the trust above created for her use and benefit, the said trust fund, or the securities or property then representing the same, shall be conveyed to and divided and distributed between and amongst her issue living at the time of her decease, in equal proportions, share and share alike, *per stirpes* and not *per capita.*

But in case my said daughter should die without leaving any issue her surviving then it is my will that the said trust fund, or the securities or property representing the same, shall thereupon be conveyed to my son *Harry*, for his own use and benefit, if he shall survive her; and in case my said son Harry shall not survive her, then I direct that the said trust fund or the securities or property representing the same, shall thereupon be conveyed to and divided and distributed between and amongst my next of kin according to the laws of the State of New York regulating the distribution of the personal estates of persons dying intestate, in equal proportions, share and share alike, *per stirpes* and not *per capita*.

Third. I hereby direct and empower the said trustee of the trust by this my will created for the benefit of my said daughter Ella Plummer Brown, whenever for any reason the said United States bonds mature or become due, or shall be paid to reinvest the proceeds thereof in other United States bonds or in bonds secured by first mortgage on improved property in New York city.

Fourth. It is my last will and I hereby direct that when from any cause such as death or otherwise my said son Harry ceases to be trustee of said trust, the said trusteeship shall devolve upon the New York Life Insurance and Trust Company.

Fifth. If United States bonds for the sum of forty thousand dollars at par do not at the time of my death constitute a part
11 of my estate, then I give, devise and bequeath unto my said executor such a sum of money as shall be sufficient to purchase so many of such United States bonds as shall be requisite to make up such amount at par, and I direct that my executor invest such sum in such United States bonds and hold the same under the provisions of this my will relating to the trust created for the benefit of my daughter Ella Plummer Brown.

Sixth. All the rest, residue and remainder of my estate, real and personal of every kind and description and wheresoever situated of which I shall die seized or possessed, or in which at my decease I shall have any interest I give, devise and bequeath unto my said son Harry Plummer to have and to hold to him, his heirs, executors, administrators and assigns forever for his own use and benefit.

Seventh. I hereby nominate and appoint my said son Harry Plummer, to be the executor of this my last will and testament, and request that no bond be required of him as such executor, or as trustee aforesaid, and revoking all former wills by me made, do declare this to be my only last will and testament.

In witness whereof I have hereunto set my hand and seal this twenty-second day of July in the year one thousand eight hundred and ninety-seven.

JOSEPH PLUMMER. [L. S.]

Signed, sealed, published and declared by the said testator Joseph Plummer, as and for his last will and testament in the presence of us, who at his request, in his presence and in the presence of

each other have hereunto subscribed our names as witnesses this twenty-second day of July, eighteen hundred and ninety-seven.

CHARLES C. BEAMAN,
11 *East 44th St., New York City.*
JOHN B. B. FISKE,
216 *53rd Street, Brooklyn, N. Y.*
R. V. INGERSOLL,
156 *West 84th St., New York City.*

12 *Affidavit of Harry Plummer, Read on Behalf of Petitioner.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal under the Transfer Tax Acts of the Property of JOSEPH PLUMMER, Deceased.

STATE OF NEW YORK, } ss.:
County of New York, }

I, Harry Plummer, being duly sworn, depose and say, as follows:

I. I am the sole executor of the will of Joseph Plummer, deceased.

II. That the said Joseph Plummer departed this life on the twenty-fourth day of October, 1898, in the borough of Manhattan, city of New York, and that he was, at the time of his death, a resident of the city, county and State of New York.

III. That the estimated value of the real property in this State, of which the said Joseph Plummer died seized is nothing. He died seized of none.

IV. That Schedule "A" annexed hereto and made a part hereof, contains according to the best of my knowledge and belief an itemized statement of all of the personal property of which
13 the said Joseph Plummer died possessed and the clear market value of each item thereof on the twenty-fourth day of October 1898, the date of the death of the said testator, such property amounting in the aggregate of the valuations in that behalf mentioned in said schedule, to the sum of $45,075.01.

V. That according to the best of my knowledge and belief, the debts owing by the said decedent at the time of his death were as follows, that is to say:

S. S. Thomas, for legal services	$5 00
Hotel Chelsea	13 89
Medical and other expenses of last illness	86 45
	$105 34

VI. That according to the best of my knowledge and belief the funeral expenses and expenses of administration are as follows:

Undertaker	$245 00
Funeral expenses	92 60
Executor's commissions—other expenses of administration (estimated)	600 00

HARRY PLUMMER.

Sworn to before me this 10th day of January, 1899.
JOHN S. SHEPPARD, JR.,
Notary Public, New York County.

14

SCHEDULE "A."

Referred to in the Foregoing Affidavit.

	Par value.	Clear market value.
Cash	$112 21	$112 21
$40,000 in U. S. Gov't 4% bonds, due 1907	40,000 00	44,400 00
One 6% debenture "B" bond of the Wabash R. R. Co. for $1,000, due 1939	1,000 00	320 00
50 shares of the capital stock of the Peoria & Eastern R. W. Co. of the par value of $100 each	5,000 00	175 00
100 shares of the capital stock of the Houston & Texas Cent. Railway Co., of the par value of $100 each	10,000 00	No market value.
100 shares of the capital stock of the Kingston & Pembroke Iron Mining Co. of the par value of $25 each	2,500 00	15 00
1,200 shares of the capital stock of the Comstock Tunnel Co. of the par value of $2 each	2,400 00	48 00
Two 1st-mort. income bonds of the Comstock tunnel, due 1919	1,000 00	4 00
1st-mort. income scrip of the Comstock tunnel for $200	200 00	80

15

300 shares of the capital stock of the Silver Islet Consolidated Mining & Lands Co. of the par value of $25 each	7,500 00	No market value.
750 shares of the capital stock of the Winnebago & O. K. Mining Co., of the par value of $20 each	15,000 00	No market value.
44 shares of the capital stock of the Kanawha & Ohio R. W. Co. 1st pref. of the par value of $100 each	4,400 00	"
30 shares of the capital stock of the Kanawha & Ohio R. W. Co. 2d pref. of the par value of $100 each	3,000 00	"
1st pref. scrip of the Kanawha & Ohio R. W. Co. for $80	80 00	"
Income bond scrip of the Ohio Central R. R. Co. for $200	200 00	"
30 shares of the capital stock of the New England Phonograph Co., of the par value of $100 each	3,000 00	"
20 shares American Wire Quilted Sole Asso.		"
$1,000 in the Hastings Brick Co.	1,000 00	No value known.
Judgment against Morland Conkling	122 98	Not collectible.
	$96,515 19	$45,075 01

16

Order Fixing Tax.

At a surrogate's court, held in and for the county of New York, at the county court-house, in the borough of Manhattan, in the city of New York, on the 19th day of July, eighteen hundred and ninety-nine

Present: Hon. James M. Varnum, surrogate.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Upon reading the report of Gilbert W. Minor, Esquire, the appraiser duly appointed by an order made and entered herein on the

nineteenth day of December, eighteen hundred and ninety-eight, which said report is dated the thirty-first day of May, eighteen hundred and ninety-nine, and was filed herein on the third day of June, eighteen hundred and ninety-nine,

It is determined, ordered, adjudged and decreed:

First. That the cash value of the property mentioned and described in said report which is now subject to the payment of the tax under the laws in relation to taxable transfers of property, is as follows, that is to say:

17 Interest in such property of Ella Plummer Brown, daughter of said testator, as beneficiary during her life, of a trust fund consisting of $40,000 in amount, at par, of bonds of the United States..... $16,120 00

and that the tax to which the said interest of the said Ella Plummer Brown is liable is $161.20.

Second. That the person or persons who will be entitled to the remainder in the fund of forty thousand dollars of United States bonds at par which the said testator by his said will directed to be held in trust for the benefit of Ella Plummer Brown during her life, and who will be chargeable with the tax which will ultimately be payable in respect thereof, cannot be ascertained, and that no tax in respect of such remainders is now payable.

JAMES M. VARNUM, *Surrogate.*

(Endorsed:) Filed July 19, 1899.

Notice of Appeal to Surrogate.

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

SIRS: You will please take notice that Harry Plummer as
18 executor of the last will and testament of Joseph Plummer, deceased, hereby appeals to the surrogate of the county of New York from the order made and entered in the above-entitled proceeding on the 19th day of July, 1899, upon the report of the appraiser heretofore filed herein fixing the amount of the tax to be assessed upon the estate of the above-named decedent. The grounds upon which this appeal is taken, are that the only property mentioned in said order, upon which a tax is fixed consists of the interest of Ella Plummer Brown, the daughter of the said decedent as beneficiary during her life of a trust fund consisting of forty thousand dollars in amount at par of bonds of the United States of America, and that the State of New York has no power to impose any tax upon bonds of the United States of America, or upon any interest therein or upon the transfer of any such bonds or interest, and that the act of the legislature of the State of New York pur-

porting to impose such tax is void, and that such property mentioned in said report and order is not subject to any transfer tax.

Upon and by this proceeding and appeal the appellant intends to draw in question the validity of the said statute of the State of New York, purporting to impose such tax, and the authority exercised thereunder by said appraiser and said surrogate in so far as United States bonds are concerned, on the ground that they are repugnant to the Constitution and laws of the United States inasmuch as they impair the power of the United States to borrow money and impair the obligation of the contract contained in said bonds to the effect that the principal and interest of said bonds shall be exempt from taxation in any form by or under State, municipal or local authority and inasmuch as they are contrary to, and violate the statute of the United States, passed July 14, 1870, entitled "An act to authorize the refunding of the national debt," under and pursuant to which statute said bonds were issued, and which in terms exempted said bonds from taxation in any form by or under State, municipal or local authority. And this appellant in this proceeding specially sets up and claims a title, right, privilege and immunity under the Constitution of the United States and under said statute in respect to the exemption of said bonds from taxation in any form, as aforesaid, which title, right, privilege and immunity is violated and destroyed by said statute of the State of New York and the tax fixed, assessed and imposed thereunder by and pursuant to the order appealed from.

Dated New York, September 15, 1899.

Yours, &c., EVARTS, CHOATE & BEAMAN,
Attorneys for Petitioner, 62 *Wall Street, Borough of Manhattan, New York City.*

To Bird S. Coler, comptroller of the city of New York; the surrogates of the county of New York.

(Endorsed:). Filed Sept. 16, 1899.

Stipulation.

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

It is stipulated and agreed by and between the attorneys for the respective parties to the above-entitled proceeding, that the forty thousand dollars in amount at par of bonds of the United States of America, of which the said Joseph Plummer died possessed, and upon the interest in which of Ella Plummer Brown, a tax of $161.20 was fixed, assessed and determined by the order appealed from, consist of four per cent. bonds issued in the year 1877 and due in the year 1907, under and by virtue of, and pursuant to the statute of the United States, passed July 14, 1870, entitled

"An act to authorize the refunding of the national debt," which authorized the Secretary of the Treasury, among other things, to issue various classes of bonds, in the sums therein mentioned, including—

"a sum or sums not exceeding in the aggregate one thousand million dollars of like bonds * * * payable at the pleasure of the United States, after thirty years from the date of their issue, and bearing interest at the rate of four per cent. per annum; all of which said several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the said bonds shall have set forth and expressed upon their face the above specified conditions;"

and that pursuant to said statute there is set forth upon the face of each of said bonds the following clause, that is to say:

"The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form, by or under State, municipal or local authority."

Dated New York, December 13, 1899.

JABISH HOLMES, JR.,
EDGAR J. LEVEY,
Attorneys for the Comptroller.
EVARTS, CHOATE & BEAMAN,
Att'ys for Appellant.

21 *Order of Affirmance.*

At a surrogate's court held in and for the county of New York, at the county court-house, in said county, on the 22d day of December, 1899.

Present: Honorable James M. Varnum, surrogate.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, having appealed to the surrogate of the county of New York from the order of the surrogate's court, entered herein on the 19th day of July, 1899, confirming the report of Gilbert W. Minor, the appraiser, filed herein on the 3d day of June, 1899, and assessing and fixing the tax herein, and said appeal coming on to be heard, and after hearing William V. Rowe, Esq., of counsel for the appellant, and Jabish Holmes, Jr., Esq., of counsel for the comptroller of the city of New York, respondent, and due deliberation having been had,

Now, on motion of Jabish Holmes, Jr., attorney for the comptroller of the city of New York, it is

Ordered and decreed, that said order entered herein on the 19th

day of July, 1899, confirming said appraiser's report, and assessing the tax herein, be and the same hereby is in all respects affirmed.

Approved as to form.

EVARTS, CHOATE & BEAMAN,
Attorneys for Appellant.

(Endorsed:) Filed Dec. 22, '99.

22 *Notice of Appeal to Appellate Division, First Department.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

SIRS: You will please take notice that Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, hereby appeals to the appellate division of the supreme court of the State of New York, in the first judicial department, from the order of the surrogate's court of the county of New York made and entered in the above-entitled proceeding on the twenty-second day of December, 1899, affirming the order of the surrogate's court herein made and entered on the 19th day of July, 1899, upon the report of the appraiser heretofore filed herein, fixing the amount of the tax to be assessed upon the estate of the above-named decedent, and also from the said order of the surrogate's court made and entered herein on the 19th day of July, 1899, confirming said appraiser's report dated May 31, 1899, and from the said report, and from each and every part of the said orders and said report.

Dated New York, December 22, 1899.

Yours, &c.,

EVARTS, CHOATE & BEAMAN,
Attorneys for Appellant, 52 Wall Street, Borough of Manhattan, New York City.

To Bird S. Coler, Esq., comptroller of the city of New York; the surrogates of the county of New York.

(Endorsed:) Filed December 22, 1899.

23 *Opinion of Varnum, S.*

On this appeal the sole question at issue is whether or not a transfer of United States bonds which took place since March 21, 1898, the date when chapter 88 of the laws of that year took effect, is taxable thereunder. The decedent died October 24, 1898, and the order fixing the tax from which this appeal is taken was made on July 19, 1899. It appears by stipulation that the bonds were issued under the act of July 14, 1870, which provides that they shall be exempt from taxation by the United States and "from taxation in any form by or under State, municipal or local authority," and that each bond contains a clause to that effect. Under these circum-

stances I have examined, with much interest, the elaborate brief of the learned counsel for the appellant, and frankly say that on principle there seems to be much to support their contention, but I am of opinion that the question is settled to the contrary by authority. It was established prior to the act of 1892 that transfers of United States bonds were subject to the tax (Matter of Howard, 5 Dem., 483; Matter of Carver, 4 Misc., 592; Matter of Tuigg's Est., 15 Supp., 548; see also Matter of Whiting, 2 App. Div., 590). And this was the view taken by apparently the only Federal court that has passed on the question (Wallace *v.* Myers, 38 Fed. Rep., 184, cited with approval in U. S. *v.* Perkins, 163 U. S., 625, at p. 629). Moreover, the court of appeals has indicated its opinion on the question of the power of the State to impose such a tax, *in dicta*, which I should consider controlling in the absence of any other authority (Matter of Whiting, 150 N. Y., 27, 31; Matter of Sherman, 153 N. Y., 1, at pages 3, 4, and 5). In the case last cited, as I read it, the court distinctly said that the legislature had power to tax the transfer of United States bonds, but that its language, as contained in
24 the act of 1892, failed to do so, and that the transfer of such securities had been properly held taxable under the acts prior to that of 1892. By the act of 1898 (chap. 88) the words which the court of appeals, in the Matter of Whiting and Matter of Sherman (*ubi supra*), construed as indicating an intention of the legislature not to tax bonds of the United States, were omitted from the section (sec. 242 of the tax law of 1896; sec. 22 of chap. 399 of Laws of 1892). It is but reasonable to suppose that, in making this omission, the legislature had in mind the decisions prior to 1892, and the judicial construction given to those words "over which this State has any jurisdiction for purposes of taxation," in the Whiting and Sherman cases, and intended by the act of 1898 to reach all "property," including bonds of the kind in question, as was possible before 1892. It is almost unnecessary to state that the theory on which the courts have held this kind of security taxable is that the tax is not upon the bonds themselves, but upon the transfer thereof. This distinction is firmly established in this State (see, besides the Sherman case, *supra;* Matter of Merriam, 141 N. Y., 479; Matter of Bronson, 150 N. Y., 1), and it seems to have been recognized in the Supreme Court of the United States (U. S. *v.* Perkins, 163 U. S., 625, which affirms Matter of Merriam, just cited).

The foregoing considerations lead me to dismiss this appeal.

25 *Stipulation.*

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

It is hereby stipulated that the foregoing papers consist of true copies of the notices of appeal, petition, report of appraiser, orders made herein, and all the evidence had and taken in the above matter bearing on the issues decided and which are sought to be

reviewed by the appeals herein; that certification is hereby waived; and that the appeals herein shall be heard upon the said papers with the same effect as if certified, and that the within case be filed as the settled case on appeal herein.

Dated December —, 1899.

JABISH HOLMES, JR.,
Attorney for Comptroller of City of New York.
EVARTS, CHOATE & BEAMAN,
Attorneys for Petitioner.

The foregoing case is settled as containing all the proceedings and all the evidence had and taken in the above-entitled matter bearing on the issues recited and which are sought to be reviewed, and the same is hereby ordered to be filed by the surrogate.

Dated December 26, 1899.

JAMES M. VARNUM, *Surrogate.*

26 STATE OF NEW YORK, }
County of New York, } ss:

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the notice of appeal, papers, and order in the matter of the appraisal under the acts in relation to taxable transfers of property of the property of Joseph Plummer, deceased, with the originals thereof in this office, and have found the same are true and correct copies of such originals, and the same with the originals thereof are all the papers upon which said order and decree was made.

In testimony whereof, I have hereunto set my hand and affixed the seal of the surrogate's court of the county of New York this 26th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

[SEAL.]
[10 cts. U. S. rev. stamp.]

27 *Order of Appellate Division Affirming Order of Surrogate.*

At a stated term of the appellate division of the supreme court of the State of New York, in the first department, held at the court-house, in the county of New York, on the 5th day of January, 1900.

Present: Honorable Charles H. Van Brunt, presiding justice. Honorable George C. Barrett, Honorable William Rumsey, Honorable Edward Patterson, Honorable Morgan J. O'Brien, associate justices.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Harry Plummer, as executor under the last will and testament of Joseph Plummer, deceased, having appealed to the appellate division

of the supreme court of the State of New York, in the first department, from the order made in the above-entitled proceeding by the surrogate of the county of New York, dated and filed herein on the 22d day of December, 1899, which order affirmed an order of the said surrogate's court made and entered on the 19th day of July, 1899, confirming the report of the tax appraiser and assessing the tax herein, and said appeal having regularly come to be heard—

28 Now, after hearing William V. Rowe, Esq., of counsel for the appellant, and Jabish Holmes, Jr., Esq., of counsel for the comptroller of the city of New York, respondent, it is—

Ordered, adjudged and decreed, that said order of the surrogate appealed from be, and the same hereby is, affirmed, with costs to the respondent against the appellant.

Matter, &c., Property of JOSEPH PLUMMER, Dec'd.

Appellate Division of the Supreme Court, First Judicial Department.

CLERK'S OFFICE, NEW YORK CITY.

I, Alfred Wagstaff, clerk of the appellate division of the supreme court in the first judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled proceeding and entered in my office on the fifth day of January, 1900, and that the original papers upon which said appeal was heard are hereunto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this fifth day of January, 1900.

[L. S.] ALFRED WAGSTAFF, *Clerk.*

29 *Notice of Appeal to Court of Appeals.*

New York Supreme Court, County of New York.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

SIRS: You will please take notice that Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, hereby appeals to the court of appeals from the order of the appellate division of the supreme court of the State of New York in the first judicial department, bearing date and entered in the above-entitled proceeding on the fifth day of January, 1900, affirming the order of the surrogate's court of the county of New York, made and entered in said proceeding on the twenty-second day of December, 1899, which affirmed the order of the surrogate's court made and entered herein on the nineteenth day of July, 1899, upon the report of the appraiser heretofore filed herein, fixing the amount of the tax to be assessed upon the estate of the above-named decedent and confirmed said appraiser's report dated May thirty-first, 1899, and from each and every part of said order.

And you will further please take notice that the grounds upon which this appeal is taken are that the only property mentioned in said order upon which a tax is fixed consists of the interest of Ella Plummer Brown, the daughter of said decedent, as beneficiary during her life of a trust fund consisting of forty thousand dollars in amount at par of bonds of the United States of America, and that the State of New York has no power to impose any tax upon bonds of the United States of America, or upon any interest therein or upon the transfer of any such bonds or interest, and that the act of the legislature of the State of New York purporting to impose such tax is void, and that such property mentioned in said report and order is not subject to any transfer tax.

Upon and by this proceeding and appeal the appellant intends to draw in question the validity of the said statute of the State of New York, purporting to impose such tax, and the authority exercised thereunder by said appraiser and said surrogate, in so far as United States bonds are concerned, on the ground that they are repugnant to the Constitution and laws of the United States, inasmuch as they impair the power of the United States to borrow money and impair the obligation of the contract contained in said bonds to the effect that the principal and interest of said bonds shall be exempt from taxation in any form by or under State, municipal or local authority, and inasmuch as they are contrary to and violate the statute of the United States, passed July 14, 1870, entitled, "An act to authorize the refunding of the national debt," under and pursuant to which statute said bonds were issued, and which in terms exempted said bonds from taxation in any form by or under State, municipal or local authority. And this appellant on this appeal specially sets up and claims a title, right, privilege and immunity under the Constitution of the United States and under said statute in respect to the exemption of said bonds from taxation in any form, as aforesaid, which title, right, privilege and immunity is violated and destroyed by said statute of the State of New York and the tax fixed, assessed and imposed thereunder by and pursuant to the order affirmed by the order appealed from.

Dated New York, January 5, 1900.

Yours, &c.,

EVARTS, CHOATE & BEAMAN,
Attorneys for Appellant, 52 *Wall Street, Borough of Manhattan, City of New York.*

To Bird S. Coler, Esq., comptroller of the city of New York; the surrogates of the county of New York.

STATE OF NEW YORK,
County of New York, } ss.:

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the notice of appeal, papers and order in the matter of the ap-

praisal under the acts in relation to taxable transfers of property of the property of Joseph Plummer, deceased (together with a certified copy of the order of the appellate division, first department), with the originals thereof in this office, and have found the same are true and correct copies of such originals, and the same, with the originals, are all the papers upon which said order was made.

In testimony whereof, I have hereunto set my hand and affixed the seal of the surrogate's court of the county of New York, this 6th day of January, in the year of our Lord one thousand nine hundred.

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

[SEAL.]

[10-cent U. S. rev. stamp.]

32 *Opinion of Appellate Division.*

New York Supreme Court, Appellate Division, First Department.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Opinion.

Per Curiam:

Order affirmed, with costs, on the authority of *In re* Sherman, 153 N. Y., 1.

33 *Opinion and Decision, January* 8, 1900.

In the Court of Appeals.

In re the Appraisal, under Acts in Relation to Taxable Transfers, &c., Property of JOSEPH PLUMMER, Dec'd.

Order affirmed, with costs, on authority of *In re* Sherman (153 N. Y., 1).

STATE OF NEW YORK:

Court of Appeals.

CLERK'S OFFICE.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that I have compared the annexed copy of the decision and opinion in the proceeding entitled In the matter of the appraisal, under the acts in relation to taxable transfers of property, of the property of Joseph Plummer, deceased, with the original on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this eighth day of January, A. D. 1900.

W. H. SHANKLAND, *Clerk.*

34 At a surrogate's court held in and for the county of New York, at the county court-house, in said county, on the 8th day of January, 1900.

Present: Hon. Abner C. Thomas, surrogate.

In the Matter of the Appraisal, under the Acts in Relation to Taxable Transfers of Property, of the Property of JOSEPH PLUMMER, Deceased.

Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, having appealed to the court of appeals from the order of the appellate division of the supreme court of the State of New York, bearing date and entered on the 5th day of January, 1900, which affirmed the order of this court bearing date and entered December 22nd, 1899, and the said appeal having been heard in the court of appeals, and thereafter by its remittitur the court of appeals having ordered and adjudged that the said order of the said appellate division affirming said order of this court as aforesaid should be affirmed with costs, and that the record of the proceedings in the said court of appeals be remitted to this court, to be proceeded upon according to law:

Now, upon reading said remittitur and upon motion of
35 Mr. Jabish Holmes, Jr., attorney for Bird S. Coler, comptroller of the city of New York, it is—

Ordered that the said remittitur be placed on file in this court; and it is—

Further ordered that the said order and judgment of the court of appeals be, and it hereby is, made the judgment and order of this court; and it is—

Further ordered that the order of this court made and entered herein on the 22nd day of December, 1899, be, and the same hereby is, in all respects affirmed, with costs to said Bird S. Coler, comptroller of the city of New York, of said appeal to the court of appeals in the sum of one hundred and fifty dollars and his disbursements upon said appeal, amounting to the sum of twenty dollars, making in all the sum of one hundred and seventy dollars.

ABNER C. THOMAS, *Surrogate.*

STATE OF NEW YORK, }
County of New York, } ss:

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the notice of appeal, papers, and order in the matter of the appraisal, under the acts in relation to taxable transfers of property, of the property of Joseph Plummer, deceased (together with a certified copy of the order of the appellate division, first department; a certified copy of the remittitur of the court of appeals, and a copy of the order directing said remittitur to be filed), with the originals thereof in this office, and have found the same are true and correct copies

of such originals, and the same, with the originals, are all the papers upon which said order was made.

New York Surrogate's Seal.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court of the county of New York this eighth day of January, in the year of our Lord one thousand nine hundred.

[Ten-cent U. S. internal-revenue stamp, canceled Jan. 8, 1900.]

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

36 [Endorsed:] Surrogate's court, county of New York. In the matter of the appraisal, under the acts in relation to taxable transfers of property, of the property of Joseph Plummer, deceased. Order on remittitur.

37 To the Honorable Rufus W. Peckham, justice of the Supreme Court of the United States:

And now comes Harry Plummer, by Evarts, Choate & Beaman, his attorneys, and complains that in the record and proceedings, and also in the rendition of an order or decree in the suit entitled "In the matter of the appraisal, under the acts in relation to taxable transfers of property, of the property of Joseph Plummer, deceased," which is in the surrogate's court of the county of New York, in the State of New York, on a remittitur from the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had remitting to the said surrogate's court of the county of New York the record in the said suit, with an order affirming an order and decree theretofore rendered in the appellate division of the supreme court of the State of New York on the 5th day of January, 1900, affirming an order of said surrogate's court of the county of New York made and entered on the 22nd day of December, 1899, in favor of Bird S. Coler, comptroller of the city of New York, and against Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, and directing that an order be entered in said surrogate's court of the county of New York in favor of the said Bird S. Coler and against the said Harry Plummer, upon which direction and
38 order a decree of affirmance was entered in said surrogate's court of the county of New York on the 8th day of January, 1900, with costs, wherein was drawn in question the validity of a statute of the State of New York and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of United States, and the decision was in favor of such their validity, all of which appears in the record and proceedings in said suit, manifest error- have happened, to the great damage of the said Harry Plummer, as executor as aforesaid.

Wherefore the said Harry Plummer, as executor as aforesaid, by his attorneys aforesaid, prays for the allowance of a writ of error

and such other proceedings as may cause the said error to be corrected by the Supreme Court of the United States.

EVARTS, CHOATE & BEAMAN,
Attorneys for Petitioner, 52 Wall Street,
New York City, N. Y.

Allowed January 9th, 1900.
R. W. PECKHAM,
Justice of the Supreme Court of the United States.

39 [Endorsed:] U. S. Supreme Court. Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, plaintiff in error, *vs.* Bird S. Coler, comptroller of the city of New York, defendant in error. Petition for writ of error. Evarts, Choate & Beaman, attorneys for plaintiff in error, 52 Wall street, New York city, N. Y.

40 In the Supreme Court of the United States, October Term, 1900.

HARRY PLUMMER, as Executor of the Last Will and Testament of Joseph Plummer, Deceased, Plaintiff in Error,
vs.
BIRD S. COLER, Comptroller of the City of New York, Defendant in Error.

And now comes the plaintiff in error, by his attorneys and counsel, and respectfully represents that he feels himself to be aggrieved by the proceedings, order, and decree of the surrogate's court of the county of New York in the above-entitled cause, and assigns error thereto as follows—that is to say:

First. The court erred in that the only property upon the transfer or in respect of which a tax is fixed by the decree and order of said court consists of an interest of Ella Plummer Brown, the daughter of Joseph Plummer, deceased, as beneficiary during her life of a trust fund consisting of forty thousand dollars in amount at par of bonds of the United States of America, and that the State of New York has no power to impose any tax upon said bonds of the United States of America or upon any interest therein or upon the transfer thereof by the last will and testament of said Joseph
41 Plummer, deceased, or otherwise, and that the act of the legislature of the State of New York, known as the "Tax law" of said State, purporting to impose such tax, is in that respect void, and that said court erred in sustaining the validity of said act and in refusing to hold the same to be void, as aforesaid, and in refusing to hold that said bonds and the transfer thereof to or in trust for the benefit of the said Ella Plummer Brown, as aforesaid, by the last will and testament of said Joseph Plummer, deceased, are not subject to tax under said tax law of said State.

Second. The court erred in refusing to hold that said tax law and the authority exercised thereunder in imposing a tax upon said

bonds were and are repugnant to the Constitution and laws of the United States of America, on the ground that they impair the power of the United States of America to borrow money.

Third. The court erred in refusing to hold that said tax law and the authority exercised thereunder in imposing the tax in question upon said bonds impaired the obligation of the contract contained in said bonds, which exempts the principal and interest thereof from taxation in any form by said State.

Fourth. The court erred in refusing to hold that the said tax law and the authority exercised thereunder in imposing the tax in question upon said bonds are invalid and repugnant and contrary
42 to the statute of the United States passed July 14th, 1870, entitled "An act to authorize the refunding of the national debt," under and pursuant to which statute said bonds were issued, and which statute in terms exempts said bonds from taxation in any form by said State.

Wherefore the said Harry Plummer, as executor as aforesaid, the plaintiff in error herein, prays this honorable court to examine and correct the errors assigned and for a reversal of the order and decree of the said surrogate's court of the county of New York entered in the above-entitled cause.

HARRY PLUMMER,
As Executor of the Last Will and Testament of Joseph Plummer, Deceased,
By EVARTS, CHOATE & BEAMAN,
His Attorneys, and
WILLIAM V. ROWE &
TREADWELL CLEVELAND,
His Counsel.

43 [Endorsed:] U. S. Supreme Court. Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, plaintiff in error, *vs.* Bird S. Coler, comptroller of the city of New York, defendant in error. Assignment of errors. Evarts, Choate & Beaman, attorneys for plaintiff in error, 52 Wall street, New York city, N. Y.

44 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the surrogate's court of the county of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said surrogate's court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit entitled In the matter of the appraisal, under the acts in relation to taxable transfers of property, of the property of Joseph Plummer, deceased, wherein was drawn in question the validity of a treaty or statute of

or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such
45 their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of January, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

46 UNITED STATES OF AMERICA, *ss:*

To Bird S. Coler, comptroller of the city of New [illegible]rk, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the surrogate's court of the county of New York, State of New York, wherein Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the

Supreme Court of the United States, this ninth day of January, in the year of our Lord one thousand nine hundred.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

47 In the Supreme Court of the United States.

HARRY PLUMMER, as Executor, &c., Plaintiff in Error,
vs.
BIRD S. COLER, Comptroller of the City of New York. } No. —.

Please enter my appearance as counsel for the defendant in error. I hereby waive the issuance of citation, and waive all security for costs or otherwise on this writ of error.

HORACE RUSSELL.

To James H. McKenney, clerk.

48 [Endorsed:] Certified copy of record.

Endorsed on cover: File No., 17,603. New York county surrogate's court. Term No., 489. Harry Plummer, as executor of the last will and testament of Joseph Plummer, deceased, plaintiff in error, *vs.* Bird S. Coler, comptroller of the city of New York. Filed January 9th, 1900.